



Determination 2014/018

Regarding the refusal to issue a code compliance certificate for the installation of bathroom facilities in a sleep-out at 3B Birchs Road, Prebbleton, Christchurch



1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the Act”) made under due authorisation by me, Tony Marshall, Manager Determinations and Assurance (Acting), Ministry of Business, Innovation and Employment (“the Ministry”) for and on behalf of the Chief Executive of the Ministry.
- 1.2 The parties to the determination are
 - the owners, DW and AJ Dalley (“the applicants”)
 - Selwyn District Council (“the authority”), carrying out its duties and functions as a territorial authority or a building consent authority.
- 1.3 This determination arises from the authority’s refusal to issue a code compliance certificate for the addition of bathroom facilities to a sleep-out.
- 1.4 I take the view that the matter to be determined² is the exercise of the authority’s power of decision in respect of its refusal to issue the code compliance certificate.
- 1.5 In making my decision, I have considered the submissions of the parties, the report of the independent expert engaged by the Ministry (“the expert”), and the other evidence in this matter.

¹ The Building Act, Building Code, Compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.dbh.govt.nz or by contacting the Ministry on 0800 242 243.

² In terms of sections 177(1)(b) and 177(2)(b).

2. The building work and background

- 2.1 The building is a single storey sleep-out and woodshed, situated on a flat site located in a high wind zone, corrosion zone 2 and Earthquake Zone B. Construction is conventional light timber framing on a concrete slab foundation. The cladding is shiplap timber weatherboards on the north and west elevations, and fibre-cement sheet with PVC jointers at the sheet edges on the south and east sides. The cladding is directly fixed to the timber framing which is Boron treated H1 Radiata Pine. Exterior joinery is anodized aluminium and the pitched gable roof is clad in profiled long-run metal. There is a ground level timber slat deck, covered by a veranda, on the north elevation.
- 2.2 On 30 September 2002 the authority issued building consent No. 021182 for the following building work:
- Woodshed split into two rooms with half to remain as woodshed and the other converted into a bathroom comprising a shower, vanity and toilet.
 - Closing in of the original exterior door to the woodshed and fit two windows to the new bathroom.
 - Walls and ceiling insulated before lining with plasterboard and painting.
- 2.3 The alteration was substantially completed by 24 February 2003 when a final inspection was carried out by the authority. From that inspection the authority noted:
- RTV between aluminium window frame & exterior cladding & around water pipe (Gaps for rain evident to enter structure)
 - Protect gully dishes against damage ie. plaster around gully dish or similar
 - Position 2/support brackets to downpipe onto exterior weatherboard (top third and lower third)
 - Temperature at basin etc 65° maximum to be 55° (Temp/valve to be adjusted)
 - Cylinder: lower [seismic] restraint required
 - Seal up gap between shower & wall linings (Top area)
- 2.4 On 10 April 2008 the authority carried out a further inspection, for which the inspection record noted 'All items from inspection carried out on 24/02/2003 now completed'. An application for a code compliance certificate was made on the same day.
- 2.5 On 30 May 2008 the authority wrote to the applicants refusing to issue the code compliance certificate. The authority noted its concerns that items identified in the 2003 inspection may have compromised the durability of some building elements and that the authority could not be satisfied that the building work would comply with Clause B2.
- 2.6 A house inspection report, dated 25 June 2013, was provided to the applicants. In regards to the sleep-out, the report noted a number of items that required attention.

3. The submissions

- 3.1 The applicants made no submission with the application, but provided copies of
- photographs of some of the building work
 - the house inspection report dated 25 June 2013
 - the inspection notice record dated 10 April 2008.

- 3.2 In a response to a request from me, the applicants provided a copy of the letter from the authority dated 30 May 2008, and the authority provided a copy of the inspection notice dated 24 February 2003.
- 3.3 A draft determination was issued to the parties for comment on 6 March 2014. The authority and the applicants accepted the draft without further comment in responses received on 14 and 31 March 2014 respectively.

4. The expert's report

- 4.1 As discussed in paragraph 1.5, I engaged the services of an independent expert, who is a registered building surveyor, to assist me. The expert visited the site on 29 January 2014 and furnished a report dated 21 February 2014 that was copied to the parties on 28 February 2014.
- 4.2 The expert noted that the overall shape and form of the building is largely in accordance with the drawings provided by the applicant to the determination, with the exception of a small window in the west wall that is not shown on the plan. The expert also observed that the exterior cladding and internal linings were 'generally straight and fair of finish', and that the roof and roof flashings have been neatly installed and were operating effectively at the time of the expert's inspection, but that overall the building was 'poorly flashed'. The expert also commented that the building was showing signs of needing a repaint in the near future.
- 4.3 In respect of the consented building work the expert noted
- inadequate sealing of the batten to the shower moulding, allowing water to flow under the batten and down behind the lining
 - there is no flashing or overlap between the fascia and the top weatherboard.
- 4.4 The expert carried out invasive moisture testing and recorded elevated moisture levels in the timber framing as follows:
- 19% - northeast corner of shower (through exterior cladding)
 - 29% - base of the shower on the east wall (through exterior cladding)
 - 19% - adjacent to shower on east wall (behind skirting).
- 4.5 The expert sent samples from the bottom plates of the east and north walls to a testing laboratory for analysis. The resulting report revealed the following:
- Pockets of early soft rot in the sample from the bottom plate of the north wall of the new bathroom. (The expert considered the most likely location of moisture ingress causing the decay would be at the top of the wall cladding due to the omission of a flashing.)
 - No established decay in the east plate but fungal morphology in various conditions suggestive of growth over a prolonged period including morphology typical of recent activity.

5. Discussion

- 5.1 The authority has concerns about the durability, and hence the compliance with the Building Code, of certain elements of the building work taking into consideration that the inspection of February 2003 had highlighted areas requiring attention and no further inspection was undertaken until 2008.
- 5.2 As the building consent was issued under the Building Act 1991, in order to issue a code compliance certificate the authority must be satisfied on reasonable grounds that the building work complies with the Building Code that was in force at the time the consent was issued.
- 5.3 I accept the findings in the expert's report, and I consider that the building work does not comply in respect of Clauses E2, E3 and B2 of the Building Code that was in force at the time the consent was issued. Given the evidence of moisture ingress and decay, further investigation and remediation may be required in order to establish ongoing compliance with Clause B1.

6. The decision

- 6.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the building work carried out under consent number 021182 does not comply with Clauses E2, E3 and B2 of the Building Code that was in force at the time the consent was issued; accordingly I confirm the authority's decision to refuse to issue the code compliance certificate.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 14 April 2014.

Tony Marshall
Manager Determinations and Assurance (Acting)